berlake v. *Thayer*, 71 Miss. 279. The rule of the principal case is frequently followed on the ground that there is an implied promise to pay at the contract price for part performance, if further performance becomes impossible. *Butterfield* v. *Byron*, 153 Mass. 517. Such a construction seems nothing more than an unjustifiable fiction, and is opposed to the weight of American authority. *Siegel Cooper Co.* v. *Eaton & Prince Co.*, 165 Ill. 550.

CORPORATIONS — FEDERAL JURISDICTION — FORMATION OF NEW CORPORATION TO EFFECT DIVERSITY OF CITIZENSHIP. — The stockholders of a corporation organized in another state a new corporation, with the same officers and stockholders, in order to get a suit concerning certain land into the federal courts. The land was transferred by the first corporation to the second, which then brought an action in the federal court against a citizen of the state in which the original corporation was incorporated. *Held*, that the action is dismissed as an attempted fraud on the federal jurisdiction. *Miller & Lux* v. *East Side Canal, etc., Co.*, U. S. Sup. Ct., Dec. 7, 1908. See NOTES, p. 290.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — SUIT BY STOCKHOLDERS ON CORPORATION'S CAUSE OF ACTION. — M was a director and majority shareholder in the plaintiff corporation. The other three directors, who owned the remaining shares, became interested in a rival company, and refused to sanction proceedings against it for infringement of the plaintiff's patent. Thereupon M brought action in the plaintiff's name to restrain the rival company. His fellow-directors applied to have the name of the plaintiff struck out, as having been used without authority. *Held*, that the application must be dismissed, as the majority shareholders had the right to control the action of the directors in the matter. *Marshall's Valve Gear Co., Ltd.* v. *Manning, Wardle & Co., Ltd.*, 25 T. L. R. 69 (Eng., Ch. D., Nov. 13, 1908).

In this country an action in the corporate name usually can be brought only by the directors. *Arkansas River, etc., Co.* v. *Farmers' Loan & Trust Co.*, 13 Colo. 587. But disloyalty on the part of directors in their fiduciary relations to the stockholders will justify the latter in equitable proceedings to compel proper action. *Singers-Bigger* v. *McCourt*, 145 Fed. 103. And where directors decline to sue, any stockholder can secure an injunction to prevent a third party, aided by the directors, from wronging the plaintiff's corporation. *Weidenfeld* v. *Sugar Run Co.*, 48 Fed. 615. The corporation and the wrongdoer, however, must be joined as parties defendant. *Donelly* v. *Sampson*, 115 N. W. 1089. In England the majority shareholders can decide whether an action in the corporate name shall proceed. *Pender* v. *Lushington*, 6 Ch. Div. 70, 79. And any shareholder may file a bill against the directors, joining the corporation as co-plaintiff. *MacDougall* v. *Gardiner*, 1 Ch. Div. 13. If a dispute arises as to which side represents the majority shareholders, the court will grant a temporary injunction until it is determined. *Pender* v. *Lushington*, *supra*. In neither country is there authority for action, as sanctioned by the main case, brought by shareholders against a wrongdoer, without proceeding through the directors, either as plaintiffs or defendants.

CORPORATIONS — TRANSFER OF STOCK — SECRET AGREEMENT BY CORPORATION TO REDEEM STOCK. — In consideration of his subscription to the capital stock of a corporation, the subscriber was promised that at any time within ten years the corporation would buy back his stock at par value, on ninety days' notice. *Held*, that the agreement is void. *Matter of Owen Publishing Co.*, 20 Am. B. R. 639 (Circ. Ct., W. D. N. Y., May, 1908).

A corporation cannot, unless the power be especially delegated, change the amount of its capital stock. *Scovill* v. *Thayer*, 105 U. S. 143. The purchase of its own shares amounts to a reduction, and an agreement to purchase is bad for that reason. *Currier* v. *The Slate Co.*, 56 N. H. 262. Furthermore, such an agreement is a fraud on creditors, for if it were carried out it would diminish their security, at least until a resale. *Copin* v. *Greenless and Ransom Co.*, 38 Oh. St. 275. In the principal case even a resale would not protect creditors;